

United States Senate

WASHINGTON, DC 20510

November 22, 2019

The Honorable Charles J. Sheehan
Acting Inspector General
U.S. Environmental Protection Agency
1301 Constitution Ave. NW
Washington, DC 20460

Dear Mr. Sheehan:

We were pleased to see that, on October 31, 2019, the Office of Inspector General (OIG) for the Environmental Protection Agency (EPA) announced its plan to begin an evaluation of EPA's implementation of Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin when implementing programs and activities. As you know, Title VI has historically been used as an enforcement mechanism for communities seeking redress for environmental injustices. However, due to a persistent lack of adequate enforcement, minority and low-income communities continue to suffer the disproportionate adverse impacts of contaminated air, land, and water.

Considerable research has demonstrated that low income and minority communities are disproportionately adversely impacted by contaminated air, land, and water.¹ Unfortunately, as the U.S. Commission on Civil Rights explained in its September 2016 report examining the efficacy of EPA's Title VI enforcement regime, those millions of Americans who live in minority and low-income communities often "lack the political and financial clout to properly bargain with polluters when fighting a siting decision or seeking redress from pollution already in their community."²

The EPA, whom these Americans entrust to treat them fairly with respect to enforcing the country's environmental laws, is failing to fulfill its mission. Pursuant to Executive Order 12898, signed by President Clinton in 1994, every federal agency – including EPA – must "make achieving environmental justice part of its mission by identifying and addressing [...] disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."³ The External Civil Rights Compliance Office (ECRCO), within the Office of the General Counsel, is tasked with ensuring that any entity receiving EPA funds complies with federal non-discrimination laws.

¹ See Paul Mohai & Robin Saha, *Which Came First, People or Pollution? A Review of Theory and Evidence from Longitudinal Environmental Justice Studies*, 10 *Envtl. Res. Letters*, no. 11. (Dec 22, 2015): p. 15 (<https://iopscience.iop.org/article/10.1088/1748-9326/10/11/115008/pdf>); see also Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, Jennifer Richmond-Bryant, *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, *American Journal of Public Health* 108, no. 4 (April 2018): pp. 480-485 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5844406>); Gary Evans and Elyse Kantrowitz, *Socioeconomic Status and Health: The Potential Role of Environmental Risk Exposure*, 23 *Annual Review of Public Health* 323 (May 2002). (<https://www.annualreviews.org/doi/pdf/10.1146/annurev.publhealth.23.112001.112349>)

² U.S. Commission on Civil Rights, *Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898*. (September 2016): p. 89 (https://www.usccr.gov/pubs/2016/Statutory_Enforcement_Report2016.pdf)

³ Exec. Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 *Fed. Reg.* 7629 (Feb. 16, 1994)

ECRCO is responsible for processing discrimination complaints filed against programs receiving EPA funding.⁴

In its 2016 report, the U.S. Commission on Civil Rights concluded that EPA had failed to substantively incorporate environmental justice into its decision-making. The 2016 report expressed concern with EPA's lack of attention to a number of issues, including process, effective remedies, finalization of guidance, transparency, and interagency coordination.⁵ We look forward to seeing the results of the OIG's evaluation of EPA's implementation of Title VI – in particular, how EPA has addressed the concerns set out in the U.S. Commission on Civil Rights' 2016 report.

We understand that OIG's objective is to determine whether ECRCO has implemented an oversight system to provide reasonable assurance that organizations receiving EPA Clean Air Act funds comply with Title VI requirements. It is important to note, however, that ECRCO has a federally mandated responsibility to enforce Title VI across a number of federally delegated programs. We request that you expand the scope of this review to include an evaluation of all federally delegated programs under which EPA has responsibility to enforce Title VI. **We also ask that your evaluation provide findings on the following questions as part of its written report:**

1. According to the U.S. Commission on Civil Rights' 2016 report, despite having the regulatory authority to do so, EPA has historically “avoided pushing civil rights complaints alleging discrimination based on disparate impact.”⁶ And according to a 2015 Center for Public Integrity investigative study, “more than nine of every 10 times communities have turned to it for help,” EPA has “rejected or dismissed their Title VI complaints,” the majority of the time rejecting claims without pursuing investigations.⁷ **Since 2016, how many complaints has EPA rejected, dismissed, referred, resolved, and accepted? In assessing these complaints, does ECRCO properly evaluate their merit in accordance with the procedural guidance set out in EPA's Case Resolution Manual for ECRCO case managers? To date, has EPA ever withheld funds from a recipient for noncompliance?**
2. One of EPA's stated goals is ensuring that all Americans have “access to accurate information sufficient to effectively participate in managing human health and environmental risks.”⁸ There is evidence, however, that the Agency may be falling short. For instance, with respect to EPA's proposed rule on coal ash in 2010, the Agency received comments expressing that communities in which coal ash was disposed were more likely to be communities of color. According to the U.S. Commission on Civil Rights' 2016 report, however, EPA failed to analyze the substantive result of its rule, meaning “affected communities were not provided a substantive meaningful

⁴ U.S. Environmental Protection Agency, Programs and Projects of the Office of General Counsel (OGC). *External Civil Rights Compliance Office (Title VI)* ([https://www.epa.gov/ogc/external-civil-rights-compliance-office-title-vi#:~:targetText=The%20External%20Civil%20Rights%20Compliance%20Office%20\(ECRCO\)%2C%20within%20the,basis%20of%20limited%20English%20proficiency](https://www.epa.gov/ogc/external-civil-rights-compliance-office-title-vi#:~:targetText=The%20External%20Civil%20Rights%20Compliance%20Office%20(ECRCO)%2C%20within%20the,basis%20of%20limited%20English%20proficiency))

⁵ See note 3 at p. 89-90

⁶ *Id.* (quoting *Jackson Shuffling of Key EPA Civil Rights Office State Sparks Criticism*, 30, InsideEPA.com (2009))

⁷ Kristen Lombardi, et al., *Environmental Justice Denied: Environmental Racism Persists, and the EPA is One Reason Why*, Center for Public Integrity. (August 3, 2015) (<http://www.publicintegrity.org/2015/08/03/17668/environmental-racism-persists-and-epa-one-reason-why>)

⁸ U.S. Environmental Protection Agency, *Our Mission and What We Do*. (<https://www.epa.gov/aboutepa/our-mission-and-what-we-do>)

opportunity to participate in decision-making that impacts their communities.”⁹ According to EPA’s Case Resolution Manual for ECRCO case managers, ECRCO is responsible for carrying out compliance with federal nondiscrimination statutes through a variety of means, including outreach activities.¹⁰ **Are ECRCO operations sufficiently transparent, and is the office conducting sufficient outreach in order to make communities aware of their right to meaningful redress and the institutional resources available to them? What steps has ECRCO taken to foster outreach and transparency? How is the public outreach work of ECRCO informed by the public outreach work being conducted by the Office of Environmental Justice?**

3. Under Executive Order 12250, the Department of Justice (DOJ) is charged with ensuring the consistent and effective implementation of Title VI and other civil rights laws. In implementing Executive Order 12250, DOJ periodically evaluates Title VI implementation, which includes requiring agencies that administer federal financial assistance to submit reports describing their past year’s performance and upcoming plans to implement Title VI. DOJ also can request information on the major components of an agency’s civil rights enforcement program, including budget and staffing for external civil rights activities, pre-award and post-award compliance reviews, regulatory and policy development, outreach and technical assistance, and training.¹¹ **What information has EPA sent to DOJ in the last three years pursuant to requirements set out in Executive Order 12250, with respect to Title VI enforcement? What steps is EPA taking to ensure it is complying with its obligations under Executive Order 12250? How is EPA working to ensure that the Attorney General can effectively coordinate the implementation and enforcement of Title VI?**
4. In its 2003 report on the use of Executive Order 12898 and Title VI to achieve environmental justice, the U.S. Commission on Civil Rights found that a lack of final guidance on the use of Title VI to remedy discrimination led to uncertainty about the effectiveness of Title VI in protecting low-income communities and communities of color.¹² In the same report, the Commission noted that, at the time of drafting, EPA was “moving toward finalizing its Title VI guidance.”¹³ Fifteen years later, however, EPA has yet to issue Title VI guidance. On January 18, 2017, EPA issued Chapter 1 of its ECRCO Toolkit, which it described as a “clarification of existing law and policy intended to provide guidance to promote and support EPA recipients’ compliance with federal civil rights laws.”¹⁴ The ECRCO Toolkit was issued in lieu of a final guidance document – it is not a comprehensive, programmatic guide for EPA

⁹ *Id.* p. 3

¹⁰ Environmental Protection Agency. *Case Resolution Manual*. (January 11, 2017) (https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf)

¹¹ Department of Justice. *Title VI Legal Manual*. September 27, 2016: p. 6 (https://www.prrac.org/title_vi_repository/doj/2017_title_vi_manual/titlevilm-1-4pdf1.pdf)

¹² U.S. Commission on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice*. (October 2003): p. iii (<https://www.usccr.gov/pubs/envjust/ej0104.pdf>)

¹³ U.S. Commission on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice*. (October 2003): p. iii (<https://www.usccr.gov/pubs/envjust/ej0104.pdf>)

¹⁴ U.S. Environmental Protection Agency, External Civil Rights Compliance Office, Office of General Counsel. *Toolkit Chapter 1 Dear Colleague Letter*. (January 18, 2017). (https://www.epa.gov/sites/production/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf)

funding recipients, and it does not make clear their obligations under Title VI.¹⁵ **How does EPA communicate Title VI obligations to grant recipients, investigators, and complainants? If there is specific, comprehensive, and programmatic guidance on this issue, please describe. Does the guidance that EPA provides adequately communicate to all relevant stakeholders the information necessary in order to effectively protect the rights of all Americans under Title VI?**

5. Under the Obama Administration, EPA committed to creating a web-based docket of Title VI-based claims. This database is no longer maintained, and was last updated in 2014.¹⁶ As a result, complainants and impacted community members are forced to submit Freedom of Information Act requests in order to gain critical information regarding their cases and agency actions. **Why did EPA discontinue its maintenance of its web-based docket of Title VI-based claims, and who was consulted in the decision-making process? Does EPA plan to recreate and maintain a Title VI database, and – if so – what steps will EPA take to ensure that the public can quickly and easily access information on Title VI claims?**

There seems to be no question that, if properly enforced, Title VI of the Civil Rights Act of 1964 would be, as the U.S. Commission on Civil Rights' 2016 report concluded, a "powerful tool for EPA to address environmental justice and remediate discrimination."¹⁷ We urge OIG to expand the scope of its audit and consider the questions posed in this letter, so that it may inform its evaluation. Thorough and sufficiently broad evaluations are critical to ensuring that EPA is complying with its enforcement obligations under Title VI and working to protect the health of all Americans.

We look forward to completion of the evaluation and hope that, going forward, EPA will take seriously its mission to protect the environment and public health, by implementing a forceful civil rights compliance regime.

Sincerely,



Doug Jones
United States Senator



Tammy Duckworth
United States Senator

¹⁵ Marianne Engelman-Lado, *No More Excuses: Building a New Vision of Civil Rights Enforcement in the Context of Environmental Justice*, 22 U. Pa. J.L. & Soc. Change 281 (2019): p. 303 (<https://scholarship.law.upenn.edu/jlasc/vol22/iss4/2>)

¹⁶ *Id.* p. 302

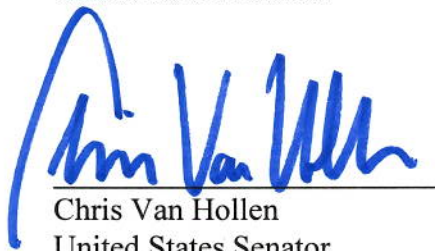
¹⁷ See note 3 at p. 89




Cory A. Booker
United States Senator



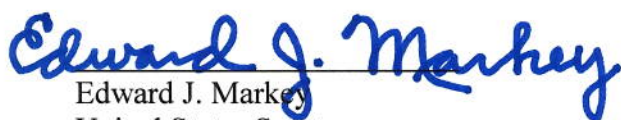
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United States Senator



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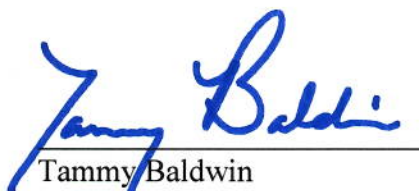
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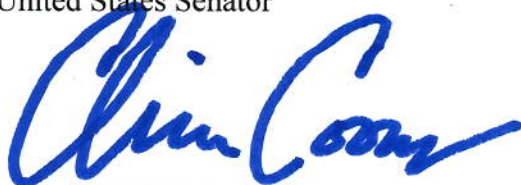
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